PART IV

Section 2-C—(II)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

REVENUE SECRETARIAT

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute :—Industrial Dispute between the workmen and the management of Sree Siddeswara Textile Mills (P) Ltd., P.B. No. 78, Davanagere.

Award of the Labour Court, Bangalore published.

Read the following papers :

(1) Letter No. 1265/67-68, dated 22nd January 1968, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 22nd day of January 1968.

Present :

Sri P. T. Kadkol, B.SC., LL.B.,
Presiding Officer.

REFERENCE No. 24 OF 1966

Workmen represented by the Secretary, Sree Siddeswara Textile Mills Employees' Association, Davanagere
.. .. *I Party.*

Vs.

The Management of Sree Siddeswara Textile Mills (Private) Ltd., P.B. No. 78, Davanagere
.. .. *II Party.*

Reference : *Government Order No. LMA 597 LLD 65, dated 5th February* 1966.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of Sree Siddeswara Textile Mills (P) Ltd., Davanagere, have referred it to this court for adjudication under Section 10(1)(c) of the Industrial Disputes Act, 1947, by their Order No. LMA 597 LLD 65, dated 5th February 1966, setting out the following points of dispute for adjudication :—

> "Is the Management of Sri Siddeswara Textile Mills Private Ltd., Davanagere City justified in dismissing the following six workers with effect from the dates mentioned against each ? If not, are the workers entitled for reinstatement with continuity of service and back wages ?
>
> (1) A. Sharanappa, T. No. 335, R.F. Sider .. 5—1—1965
> (2) Thammanni, T. No. 112, Spg. .. 8—1—1965
> (3) Mazeed, T. No. 489, R.F. Doffer .. 1—4—1965
> (4) Ramalingappa, T. No. 611, R.F. Sider .. 5—4—1965
> (5) Hanumanthappa, T. No. 1068, Winder .. 13—5—1965
> (6) Ravatappa, T. No. 408, R.F.B. Sider .. 24—5—1965

2 The six aggrieved workers were employed in the Sri Siddeswara Textile Mills, Davanagere, the Management of which is the Second Party in this case. Their services have been terminated by the Management. The termination of their services is the subject matter of this dispute. Their cause has been sponsored by the Sri Siddeswara Textile Mills' Employees Association, Davanagere. This Union, as representing the workmen, is the first party. Mr. M. C. Narasimhan has appeared for the Union and Mr. Chandradas has appeared for the Management.

3. The records produced by the Management, which have been admitted by the Union, show the following state of affairs :—

(*a*) Aggrieved workman A. Sharanappa, Serial No. 1 in the order of Reference was issued a notice by the Management on 19th January 1965, to show cause why disciplinary

action should not be taken against him for misconduct on three counts punishable under certified Standing Order No. 15(3) of the Establishment. Sharanappa submitted his explanation on 20th January 1965. The Management was not satisfied with it. So it charge-sheeted him on 29th January 1965, under the above counts and directed him to face a domestic enquiry. On 3rd February 1965, he wrote to the Management that he would attend the enquiry. Thereafter an enquiry was held by the Management through Mr. Sivappa (W.W. 2) the Labour Welfare Officer attached to the Establishment. Sharanappa took part in the enquiry. At the end of the enquiry, the Enquiry Officer recorded a finding to the effect that Sharanappa was guilty of misconduct and made his report to the Management. The Management accepted the finding and dismissed Sharanappa by its order dated 5th February 1965 and further directed that the dismissal should take effect from 8th January 1965. All the relevant documents are in the file marked Ex. M. 6 (Pages 1 to 27).

(*b*) Aggrieved workman Thammanni (also called Thammayya) was charge sheeted by the Management on 8th January 1965 for misconduct on five counts and was asked to face a domestic enquiry. On 11th January 1965, he sent a reply to the Management saying that he was not guilty of the charge on any of the counts. Shivappa (M.W. 2) held the domestic enquiry against him and submitted a report to the Management, holding that he was found guilty of the charge. The Management accepted the report and passed an order on 15th January 1965, dismissing him from service with effect from 8th January 1965. All the relevant records are to be found in the file marked Ex. M. 5 (Pages 1 to 24).

(*c*) Aggrieved workman Mazeed, Serial No. 3 in the order of Reference has been terminated by the Management on the ground that he had tendered his resignation on 2nd April 1965 and that it was accepted by the Management on that very day. The relevant records are to be found in the file marked Ex. M. 4 (Pages 1 to 6).

(*d*) Aggrieved workman Ramalingappa, Serial No. 4 in the order of Reference was charge-sheeted by the Management on 5th April 1965 for misconduct on four counts and was asked to face a domestic enquiry. He gave his reply to the charge on 6th April 1965 denying the charge. A domestic enquiry was held by Shivappa (M.W. 2). At the end of the enquiry, he found the workman guilty of the charge and made his report to the Management accordingly. Accepting this report, the Management passed an order on 8th April 1965, dismissing the worker, with effect from 5th April 1965. The relevant records are to be found in the file marked Ex. M. 3 (Pages 1 to 22).

(*e*) Aggrieved workman Hanumanthappa, Serial No. 5 in the order of reference, was issued a notice by the Management on 13th May 1965, to show cause why action should not be taken against him for misconduct on one count. He gave his reply on 15th May 1965. According to the Management, the worker did not attend the Mills thereafter and stayed away from work. Hence the Management issued him a Notice on 24th May 1965 calling upon him to present himself for duty within three days and intimating him that if he failed to do so, then, his name would be struck off the rolls. According to the Management, the worker did not report for duty. Hence it passed an order on 29th May 1965, removing his name from the Roll, under the Standing Orders. The relevant records are to be found in the file marked Ex. M. 2 (Pages 1 to 9).

(*f*) Aggrieved workman Ravathappa, Serial No. 6 in the Order of Reference, was issued a notice by the Management on 21st May 1965, calling upon him to show cause why action should not be taken against him for misconduct, for assaulting a co-worker by name Yogiswar. The worker gave his reply on 22nd May 1965. The Management was not satisfied with it. Hence it issued him a charge-sheet on 24th May 1965 and called upon him to face the domestic enquiry. The Enquiry was held by Shivappa (M.W. 2). He found the worker guilty and made his report to the Management, accordingly. The Management accepted the finding and passed an order on 26th May 1965,

dismissing the worker from service with effect from 24th May 1965. The relevant records are in the file marked (Ex. M. 1) Pages 1 to 18.

4. The First Party Union has submitted its claim statement dated 19th April 1966, on behalf of the aggrieved workers. It has admitted therein that domestic enquiries were held in the case of four workers and thereafter they were dismissed. It has however contended that the enquiries held were opposed to all principles of natural justice; the enquiry officer acted unfairly; the workmen were deprived of the opportunity to defend themselves; in some cases their witnesses were not allowed to make their submissions; the witnesses for the Management were not allowed to be cross-examined; no records were produced or given to the delinquents to enable them to defend themselves; the workers had been victimised; worker Mazeed had never tendered his resignation, etc. On these grounds, the Union has prayed that all the workers should be directed to be reinstated in their former posts with full back wages and continuity of service.

5. The Management has submitted its statement of objections dated 7th May 1966. It has denied all the allegations made by the Union in the claim statement, with regard to the domestic enquiries held by it. It has asserted that all enquiries were held observing all the accepted principles of natural justice. Then it has asserted that Mazeed had tendered his resignation and it had been accepted. It has averred that there is no merit in this Reference and prayed that it should be rejected.

6. When the matter came up before me on 23rd August 1966, in Davanagere Camp, Mr. Chandradas, appearing for the Management, submitted that he would rely on the records of the domestic enquiry and would also lead additional evidence. Hence the following additional issues were framed and set down for hearing:—

(1) Does the Second Party prove the charges of misconduct against the workmen (1) Sharanappa, (2) Thammanni, (3) Ramalingappa, (4) Hanumanthappa and (5) Ravathappa?

(2) Are the workmen mentioned above liable to be dismissed, if misconduct alleged against them is held proved ?

(3) Should the findings recorded in the domestic enquiry and the orders passed in them be upheld ?

(4) Does the First Party prove that findings recorded in the domestic enquiry and the orders passed in them are liable to be set aside on the ground of (1) lack of good faith, (2) victimisation or unfair labour practice, (3) basic error or violation of the principles of natural justice on the part of the Management or they being baseless or perverse ?

(5) Does the Second Party prove that it has not terminated the service of Mazeed but has only accepted his resignation and acted upon it ?

(6) What relief, if any, are the aggrieved workmen, entitled to ?

The Parties were directed to lead evidence on these issues and they have done so. The Management has examined the Spinning Master Basavaraj (M.W. 1), the Enquiry Officer Shivappa (M.W. 2) and Maistry Hussain Sab (M.W. 3) and produced the documents marked Exts. M. 1 to M. 12. The First Party Union has examined the aggrieved worker Mazeed (W.W. 1), aggrieved worker Hanumanthappa (W.W. 2) and the President of the Union Sidramappa (W.W. 3) and produced two documents marked Exts. W. 1 and W. 2. This is all the evidence in the case.

7. From the documents at Exts. M. 1 to M. 6 we find that :—

(1) Mazeed's services have been terminated by the Management on the ground that he had tendered resignation ;

(2) Hanumanthappa's services have been terminated by the Management on the ground that he had remained absent continuously for many days and did not report to duty in spite of a notice issued to him ; and

(3) The remaining four workers, *viz.*, Sharanappa, Ravatappa, Thammanni *alias* Thammayya and Ramalingappa have been dismissed by the Management on the ground of their having been found guilty of misconduct at the domestic enquiries, held against them.

8. I first take up the case of the four workers who have been dismissed by the Management after being found guilty at the domestic enquiry. The Management relies on the records of enquiry to support the charges against the delinquents. In addition, it also seeks to rely on the evidence led by it in this court. So the first question that arises for consideration is whether the findings recorded at the domestic enquiry require to be set aside. The Supreme Court has laid down in Indian Iron & Steel Co., Ltd., *Vs.* Their Workmen (1958-I-LLJ 260) and some subsequent decisions that such findings can be set aside when :—

(i) there is want of good faith on the part of the management ;

(ii) there is victimisation or unfair labour practice ;

(iii) the Management has been guilty of a basic error or violation of principles of natural justice ;

(iv) on the materials, the finding is completely baseless or perverse.

The Union has therefore been called upon to prove any or all these ingredients by framing the fourth issue and setting it down for hearing. How far a court, dealing with such a question can go, has been laid down by the Supreme Court in J. K. Cotton Spinning and Weaving Company

Ltd., *Vs.* Its workmen reported in 1965 (2) LLJ 153. The observations are as under :—

> "It has been pointed out time and again that an industrial tribunal to which a dispute arising from dismissal of an industrial employee has been referred for adjudication is not an appeal Court having the power to examine the correctness of the conclusions of fact arrived at by a domestic tribunal. Where the industrial tribunal finds that there was nothing improper or unfair in an enquiry conducted by the domestic tribunal and where the action taken against workmen was not actuated by any ulterior motive or where the principles of natural justice have not been infringed, it is beyond the powers of an industrial tribunal to set at nought the action taken by the management which lay within its competence under the standing orders. Whether the material before the domestic tribunal was adequate or not or whether the particular witnesses upon whom reliance was placed by the tribunal should have been believed or not was entirely a matter for the consideration of the domestic tribunal. The industrial tribunal, while adjudicating upon an industrial dispute referred to it, does not possess the power of reviewing the evidence adduced before the domestic tribunal or of taking fresh evidence before it except in the limited class of cases as referred to in the decision in 1959 I LLJ. 285."

It has also been held by the Supreme Court in various decisions that "want of good faith", "victimisation" and "unfair labour practice" on the part of the Management can not be inferred lightly. Such an inference may be drawn only on the basis of tangible evidence led in the case. The Supreme Court has also ruled in many decisions that

principles of natural justice require that in a domestic enquiry :—

(i) a charge in very clear terms should be framed and served on the delinquent ;

(ii) the evidence of all the Management witnesses should be recorded in the first instance in the presence of the delinquent and the delinquent should be given full opportunity to cross-examine them ;

(iii) thereafter, opportunity should be given to the delinquent to examine himself and examine such witnesses and adduce such evidence he wants in his defence ; and

(iv) the enquiry Officer should record his findings after considering all the materials placed before him and submit his report.

It is therefore, necessary to examine the evidence and the records of enquiry in the light of these decisions given by the Supreme Court.

9. The First Party Union has examined three witnesses in this case. They are Mazeed, Hanumanthappa and Sidramappa. Mazeed and Hanumanthappa do not say anything regarding the want of good faith, unfair labour practice or victimsation, on the part of the Management. They have not stated any facts on the basis of which, at least, such inference could be drawn against the Management. The four workers who have faced the domestic enquiries and who are the persons really aggrieved by the findings recorded in them, have not stepped into the witness box. It was for them to say how the enquiry officer was unfair to them. It was for them to say what opportunities were not given to them. It was for them to say why the Management was lacking in good faith in proceeding against them and how and in what manner they were victimised or subjected to an unfair labour practice. They have not come forward to say anything against the Management or against the Enquiry held against them or against the enquiry

officer who held them. Sidramappa (W.W. 3) is the President of the first party union. All that he has stated is that his union was formed on 17th December 1964 and Sharanappa was its Assistant Secretary and Ramalingappa was a member of its Executive Committee. He too does not attribute want of good faith, victimisation or unfair labour practice to the Management. So, we find that there is absolutely no evidence on record to hold that the Management was lacking in good faith or was prompted by a sense of victimisation or unfair labour practice, in proceeding against these four workers found guilty at the domestic enquiries held against them.

10. The next question arising for consideration is whether any principles of natural justice have been violated at or during the domestic enquiries. The pattern of enquiry followed by the enquiry officer Shivappa (M.W. 2) is this: He has first read over the charge sheet to the delinquent and explained it to him in Kannada. Then he has asked the delinquent what he had to say regarding the charge. The delinquent has denied the charge. Thereafter, the enquiry officer has examined all the Management witnesses and given opportunity to the delinquent to cross-examine them. In the end he has examined the delinquent himself. The delinquent has stated at the beginning itself that he had not got any witnesses to examine in his defence. In fact, this question should have been put to the delinquent, by the enquiry officer, in the end. But none of the delinquents have even now come forward to say that they wanted to examine some witnesses in their defence and no opportunity was given to them by the enquiry officer, to examine them. So far as I can see, the pattern adopted by the enquiry officer, for the conduct of the domestic enquiries is quite consistent with the accepted principles of natural justice, but for one small flaw pointed out by me above.

11. Exhibit M. 1 is the file relating to the domestic enquiry held against Ravathappa. Four witnesses have been examined by the Management. Below each witness's statement, the enquiry officer has noted that the delinquent said

he had no questions to ask the witness, by way of cross-examination. He has also made a note that the delinquent refused to sign the proceedings. Ravathappa has not come into the witness box to say that these notings made by the enquiry officer are wrong or false. The enquiry officer, in his report, has discussed the materials placed before him and recorded a finding to the effect that the delinquent was found guilty of the charge levelled against him. The view taken by him is a possible view. It cannot be considered as basically erroneous or perverse. Hence I see no reason whatsoever to set aside the finding recorded against Ravatappa and the order passed by the Management, dismissing him from service.

12. Moreover, Ravathappa has sent an application dated 24th January 1967 to this court on 21st September 1967. He has stated therein that he had settled his dispute with the Management amicably and had settled all his accounts with the Management and hence would not press his demands. To this application he has enclosed a letter written by him to the Management in similar terms. The application and its enclosure have been included in the file. For the reasons given by me in the foregoing and this paragraph, I hold that Ravathappa is not entitled to any relief at the hands of this Court and this Reference, so far as he is concerned, requires to be rejected.

13. Exhibit M. 3 is the file relating to the domestic enquiry held against Ramalingappa. The Management has examined six witnesses in this case. Some of them have been cross-examined by the delinquent. With regard to others, he has said that he had no questions to ask them by way of cross-examination. The enquiry officer has made a note to that effect and also to the effect that the delinquent refused to sign the proceedings. The delinquent has not examined himself before me to say that nothings made by the enquiry officer are either wrong or false. The enquiry officer has considered the entire material placed before him and recorded his finding that the delinquent was guilty, This view taken by the Enquiry Officer is quite a possible

view. It cannot be considered as basically erroneous or perverse. Hence I see no reason to interfere with the finding recorded in the case of this worker and the order passed against him by the Management, on the basis thereof.

14. This worker Ramalingappa also has sent an application to this court on 20th August 1966. He has said therein that he had settled his dispute with the Management and also received all the amounts due to him from the Management and hence did not wish to press his case. He has also said therein that he had accepted a fresh employment in the Sujata Textile Mills, Nanjangud. To this application he has enclosed the copy of the letter written by him to the Management. The Management has produced the receipts signed by Ramalingappa, showing the payments made to him, at Exhibit M. 8 (a) to M. 8 (d). For all these reasons, therefore, I hold that this worker also is not entitled to any reliefs at the hands of this Court.

15. Exhibit M. 5 is the file relating to the worker Thammanni, also called Thammayya. Seven witnesses have been examined by the Management in this case to prove the charge against him. Six of them have been cross-examined by the delinquent. The enquiry officer has considered all the materials placed before him and recorded a finding to the effect that the delinquent was guilty of the charges levelled against him. The delinquent has not stepped into the witness box to challenge any of the notings made by the enquiry officer. The view taken by the Enquiry Officer is a possible view on the basis of the evidence placed on record. It is not erroneous or perverse. Hence I see no reason to interfere with the finding recorded by the enquiry officer or with the order passed by the Management on the basis thereof.

16. This delinquent Thammanni also has sent an application to this court on 18th November 1966. He has said therein that he had settled his dispute with the Management and received all the monies due to him. To this application he has enclosed a copy of the letter written by him

to the Management. The Management has produced the receipts signed by Thammayya for receiving payment, in final settlement of his claims. For this reason also, I hold that he is not entitled to any reliefs at the hands of this court.

17. Exhibit M. 6 is the file relating to the enquiry held against Sharanappa. The Management has examined seven witnesses in this case. The delinquent has cross-examined two of them. With regard to the others he has stated that he had no questions to ask them, by way of cross-examination. The Enquiry Officer has made a note to this effect and also to the effect that the delinquent refused to sign the proceedings. The delinquent has not entered the witness box to say that these notings are wrong or false. The delinquent has also examined two witnesses in his defence. After considering all this material placed before him, the Enquiry Officer has found him guilty of the charge levelled against him and submitted his report to the Management accordingly. The view taken by the Enquiry Officer is a possible view and it can not be considered as basically erroneous or perverse. Hence I see no reason to interfere with it or the order passed by the Management on the basis of it. Moreover, this delinquent also has settled his dispute and accounts with the Management as can be seen from the receipts passed by him and produced at Exhibits M. 9 to M. 12. In my opinion therefore, this delinquent also is not entitled to any reliefs at the hands of this Court.

18. The file at Exhibit M. 4 relates to the aggrieved worker Mazeed. The case of the Management is that Mazeed tendered his resignation and therefore, accepting it, it terminated his services. The letter of resignation is at page 1, in Exhibit M. 4. It is written in Kannada and bears a thumb mark, which is stated to have been made by him. Mazeed has been examined as W.W. 1. He has stated that he does not know Kannada language, and can not sign his name. He has sworn that he has never resigned his job and stated :—

> "One Hussain and one Muppanna, made me put my thumb mark on some paper, when spinning

master Basavraj was standing behind them. My thumb mark was taken on a blank paper. I asked Hussain why my thumb mark was being taken on a blank paper. He did not give any reply but beat me. Thereafter I was sent home....."

Then he has stated that when he went for work on the day following the day of the above incident, the watchman refused him entrance inside the Mills.

19. He has been cross-examined by Mr. Chandradas, appearing for the Management. Therein he has stated that on the day, following the day of the incident, he went to the Union Office and met Sharanappa (one of the aggrieved workers and Assistant Secretary of the Union) and told him everything that had taken place including the fact that Hussain nad Muppanna had taken his thumb-mark on a blank paper. When the Spinning master Basava-raj was standing behind and that Sharanappa took down everything and took his thumb mark below it and sent it to the Labour Authorities. A copy thereof has been produced at Exhibit W. 1. Now it may be noted that the letter of resignation (Page 1 in Exhibit M. 4) does not bear any date. There is an endorsement on it to the effect that the resignation had been accepted and below this endorsement the date put is 2nd April 1965. Now I proceed to examine Exhibit W. 1. Therein, Mazeed has said that some persons in the Company (he means the Second Party Mills) threatened him on 1st April 1965 and took his thumb mark on a blank paper and on 3rd April 1965, he was not allowed to enter into the Mills for work and he was not allowed to work. He has not said therein, specifically that Hussain and Muppanna threatened him and took his thumb mark on a blank paper, when Basavaraj was standing behind. This omission can not be considered as insignificant, especially when Mazeed himself has stated that Sharanappa had taken down everything told by him and had even read it over to him before taking his thumb mark. Then we notice that Mazeed has stated that he went to

the Union Office on the day following the date of the incident and Sharanappa took it down and sent it to the Labour Authorities. If so, Exhibit W. 1 should bear the date 2nd April 1965 or 3rd April 1965. But it actually bears the date 14th April 1965. A copy of Exhibit W. 1 sent to the Management has been included in the file Exhibit M. 4. The file also contains a letter written by the Assistant Labour Commissioner, dated 17th April 1965, calling upon the Management to give its say regarding the application dated 14th April 1965 sent by Mazeed. This means that Mazeed has waited for 12th to 13 days before making up his mind to send Exhibit W. 1. Why this delay? There is no explanation. He has not complained to the Management that his thumb-mark had been taken on a blank paper nor has he intimated the Management that he was not allowed inside the Mills, by the Watchman. He has not even approached his own union, with this complaint for 12 to 13 days after the incident. This conduct on the part of Mazeed casts a serious doubt about his present story. Mazeed has stated that his relations with Basavaraj were always good. Basavaraj is a very responsible officer in the Mills, being the Spinning Master. I fail to understand why he should stoop so low as to stand behind and make Hussain and Muppanna take the thumb mark of Mazeed on a blank paper. I also cannot understand, why the thumb mark should be taken on a blank paper, when it could as well be taken on a paper on which the resignation was written out completely, so long as Mazeed could yield to a threat. Basavaraj (M.W. 1) as well as Hussain (M.W. 3) have denied that they took the thumb mark of Mazeed on a blank paper, putting him under threat. They have been subjected to a searching cross-examination and have stood it well. After all, I fail to understand what interest or motive Hussain and Muppanna should have, in taking Mazeed's thumb mark on a blank paper. Nothing has been said or alleged against them. If Basavaraj wanted to terminate the services of Mazeed for any reason, he could certainly have adopted a more refined way than taking the thumb mark on a blank paper. It appears to me that Mazeed tendered his resignation voluntarily on the 1st or 2nd April

1965. Thereafter, he appears to have changed his mind and decided to continue in the job. He has not followed the strightforward way of requesting the Management to permit him to withdraw his resignation and allow him to continue in service. The story now given by him is very untrustworthy and I am not inclined to accept it. Hence I hold that Mazeed is not entitled to reinstatement with or without back wages.

20. The file at Ex. M. 2 relates to Hanumanthappa. The Management gave him a show cause notice on 13th May 1965 and Hanumanthappa gave his reply thereto dated 15th May 1965, which was received by the Management on 17th May 1965 (Pages 1 and 2 of Exhibit M. 2). This explanation has not been followed up by any charge-sheet against him. Seven days later, that is on 24th May 1965, the Management has issued him a Notice (Page 2, Exhibit M. 2) as under :—

> ..... you have given your reply to the show cause notice dated 13th May 1965, by registered post on 18th May 1965. You have not come to the Mills nor met the concerned officers. If you fail to report for duty within three days or fail to meet the concerned officers, your services will be terminated according to the Standing Orders."

This notice has not been sent by the Management to the address of Hanumanthappa. A copy thereof has been sent to the Notice Board and another is ordered to be pasted to the Main Gate. Thereafter, the Management has passed an order on 29th May 1965 (Page 4, Exhibit M. 2) to the effect that since Hanumanthappa had failed to turn up for work within 3 days from the date of the notice dated 24th May 1965, his name was removed from the Roll (Attendance Register) as per model Standing Order 9(3) (a), due to long absence.

21. A copy of the certified Standing Orders has been produced at Exhibit M. 7. It reads as under :—

9. (3) If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he—

(*a*) returns within eight days of the expiry of his leave and

(*b*) explains to the satisfaction of the Manager his inability to return before the expiry of his leave.

It is not the case of the Management that Hanumanthappa was on leave and he had over stayed it beyond the permitted period. Evidently, therefore, Standing Order No. 9 (3) (a) can not be applied to him and his services can not be terminated thereundre. The order terminating his services, therefore. requires to be set aside and he be directed to be reinstated.

22. I would have done so, but for some subsequent developments. He has given an application (Page 6, Exhibit M. 2) to the Management on 17th January 1966, stating that he had resigned his job and requesting the Management to settle his accounts. He has signed below this application and it is marked Exhibit 2(*b*) (1). With regard to this application, he has stated in his cross-examination :—

"I see page 6 in Exhibit M. 2. The signature now marked Exhibit M. 2 (b) (1) is made by me. I can read and write Kannada and I have learnt up to the 2nd standard in English. The text appearing above my signature Exhibit M. 2 (b) (1) has been got written by me from my friend Hanumanthappa. The contents of the text are now read over to me and they are correct. The Management of the Second Party has paid me all the amounts due to me. It is true that I am now working in the Davanagere Cotton Mills."

After this statement was made by Hanumanthappa in his cross-examination, the learned representative of the first paryt union sought my permission to examine him, in chief on the point. I permitted him. In his examination, he has stated :—

> "I gave the resignation as per Exhibit M. 2 (6) because I was in need of money and the Management said that the money would be paid to me, if I tendered my resignation."

Mr. Chandradas cross-examined him on this point. In reply he has stated :—

> "The Management did not press me or compel me to tender my resignation."

The Management has accepted this resignation of Hanumanthappa and settled his accounts and paid him the amounts due. The receipts passed by Hanumanthappa are included in the file Exhibit M. 2 at pages 7 and 8. In these circumstances, no order can be passed directing the Management to reinstate him. Moreover, he has accepted a job in another Mill and is working there and seems to be satisfied with it. But it can be seen that he has been terminated on 29th May 1965 and that termination is wrongful. He has tendered his resignation on 17th January 1963 and it has been accepted. I would, therefore, hold that he is entitled to full wages from 29th May 1965 to 17th January 1966 and direct the Management to pay them.

23. I have dealt with all the points in dispute, in the light of the evidence placed before me. I have given my conclusions also, on the various points of dispute raised by the parties. In view of the conclusions reached by me, I record my findings on the first, second, third and fifth issues in the affirmative and on the fourth issue in the negative.

24. None of the six aggrieved workers are entitled to be reinstated. The workers Sharanappa, Ravalappa, Hanumanthappa and Ramalingappa have already settled their accounts with the Management. The Orders of dismissal in the case of these workers have been passed with

retrospective effect. This part of the order is not correct as conceded by Mr. Chandradas, in his memo dated 23rd October 1967. The orders of dismissal are to take effect from the dates on which they are passed. The workers are, therefore, entitled to the difference in wages as indicated below in the Award. If Mazeed is entitled to get any money from the Management, he may file an application under Section 33 C (2).

25. In the result, therefore, I make an award under :—

AWARD

1. The Reference is partly accepted.

2. The demand made by all the six workers and the first party union on their behalf for their reinstatement with back wages and continuity of service is rejected.

3. The Management is directed to pay full wages to

(*a*) Sharanappa from 8th January 1965 to 5th February 1965 ;

(*b*) Thammanni from 8th January 1965 to 15th January 1965 ;

(*c*) Ramalingappa from 5th April 1965 to 8th April 1965 ;

(*d*) Hanumanthappa from 29th May 1965 to 17th January 1966 ;

(*e*) Ravatappa from 24th May 1965 to 26th May 1965.

4. These wages should be paid by the Management of the Second Party to the abovementioned workers, within 15 days from the date of the publication of this Award in the Mysore Government Gazette. If any money is due to

Mazeed from the Management on the basis of his resignation, he may file an application under Section 33C(2) of the Industrial Disputes Act, 1947.

5. Parties do bear their own costs.

(Sd.) P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER

Bangalore, 31*st January* 1968.

S.O. 485.—WHEREAS by State Government Order No. LMA 597 LLD 65, dated 5th February 1966, the Industrial Dispute between the Workmen and the Management of Sree Siddeswara Textile Mills (P) Ltd., P.B. No. 78, Davangere was referred to the Labour Court, Bangalore for adjudication.

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute ;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial D'sputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

[No. LMA 597 LLD 65]

By Order and in the name of the Governor of Mysore,

G. G. PUROHIT,
Under Secretary to Government,
F.C.L. Department.